

**CALENDAR ITEM**

**C12**

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04/20/17

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W 27043

K. Connor

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Stephen R. Flance and Kristen H. Flance

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 6912 Pomin Avenue, near  
Tahoma, Placer County

*AUTHORIZED USE:*

Use and maintenance of an existing marine rail system, wood piling, water  
intake line, and two mooring buoys not previously authorized by the  
Commission.

*LEASE TERM:*

10 years beginning April 20, 2017.

*CONSIDERATION:*

\$1,100 per year, with an annual Consumer Price Index adjustment.

*SPECIFIC LEASE PROVISIONS:*

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair public access and uses.
3. If Lessee does not have valid Tahoe Regional Planning Agency (TRPA) buoy permits, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such

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authorization within the time limit, they may be required to remove the buoys.

4. Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

**Public Trust and State's Best Interests Analysis:**

With the exception of the freshwater intake pipeline, the improvements facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. The marine rail system extends from the upland property into the lake. The rail lies on the lakebed allowing the public to navigate or walk over it depending on the water level. The buoys and the wood piling are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The freshwater intake pipeline is not generally associated with traditional Public Trust uses. However, this pipeline has been in place for many years, and occupies a small area of the lakebed. The owners use the pipeline to provide water for irrigation to the upland property. The pipeline does not interfere with the Public Trust activities at this location and at this time.

In 1997, ownership of the upland parcel transferred to Stephen R. Flance and Kristen H. Flance. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of an existing marine rail system, wood piling, water intake line, and four mooring buoys not previously authorized by the Commission. Based on the TRPA permitting process it is believed the buoys have been in Lake Tahoe for many years.

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The Applicant provided a copy of the buoy permit for three buoys issued by TRPA in July 2010 under the “grandfather clause” of the now vacated TRPA Shorezone ordinances adopted by TRPA in 2008.

Prior to 2008, TRPA ordinances allowed only two existing private mooring buoys per littoral parcel. TRPA adopted new shorezone ordinances in 2008 which allowed permitting of up to three existing private mooring buoys located adjacent to a lakefront parcel if the owner could verify that the third buoy was placed in the lake prior to 1972, or had an existing valid lease for a third buoy from the Commission, or a valid permit from the U.S. Army Corps of Engineers. Commission staff commented to TRPA several times prior to adoption of the 2008 TRPA shorezone ordinances that there was no analysis of the need for a third buoy and the ordinance was giving recognition to previously unpermissible buoys. In 2010, the 2008 TRPA shorezone ordinances and the buoy permits issued under them were found to be invalid by the U.S. District Court. This decision was upheld by the 9<sup>th</sup> Circuit U.S. Court of Appeals.

TRPA is now operating under the pre-2008 Code of Ordinances which do not have a third buoy grandfather clause. Recommending approval for a third buoy would be in direct conflict with the current TRPA Code of Ordinances. In September 2016, staff advised the Applicant that staff would not recommend more than two buoys in the new lease because of the conflict with TRPA's current code.

Staff recommends the Commission authorize two existing mooring buoys and the existing marine rail system, wood piling, and water intake pipeline to be consistent with the current TRPA Code of Ordinances. Staff recommends the Commission deny authorization for the two additional buoys.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to

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compensate the people of the State for the occupation of the public land involved. For all the reasons above, Commission staff believes the issuance of the lease for two mooring buoys, marine rail system, wood piling, and the water intake pipeline is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. Applicant owns the upland adjoining the lease premises.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. **Marine Rail System, Water Intake Pipeline, Wood Piling, and Two Mooring Buoys:** The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

4. **Denial of Two Additional Mooring Buoys:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a).

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through

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the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Authorize Marine Rail System, Water Intake Pipeline, Wood Piling, and Two Mooring Buoys:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

**Deny Authorization for Two Additional Mooring Buoys:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a), projects which a public agency rejects or disapproves.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

1. Authorize issuance of a General Lease – Recreational Use to Stephen R. Flance and Kristen H. Flance, beginning April 20, 2017, for a term of 10 years, for the use and maintenance of an existing marine rail system, wood piling, water intake pipeline, and two

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mooring buoys as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$1,100, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

2. Deny authorization for two additional mooring buoys not previously authorized by the Commission.

## EXHIBIT A

W 27043

### LAND DESCRIPTION

Five parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to fractional Section 8, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, and more particularly described as follows:

#### PARCELS 1 & 2 - BUOYS

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to those parcels described in the Grant Deed recorded December 11, 1997 as Document Number 97-0078845-00 in Official Records of said County

#### PARCEL 3 – MARINE RAIL SYSTEM

All those lands underlying an existing marine rail system lying adjacent to those parcels described in said Grant Deed.

EXCEPTING THEREFORM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

#### PARCEL 4 - PILINGS

All those lands underlying a remnant pier piling lying adjacent to those parcels described in said Grant Deed.

TOGETHER WITH any applicable Impact Area(s).

#### PARCEL 5 – WATER INTAKE LINE

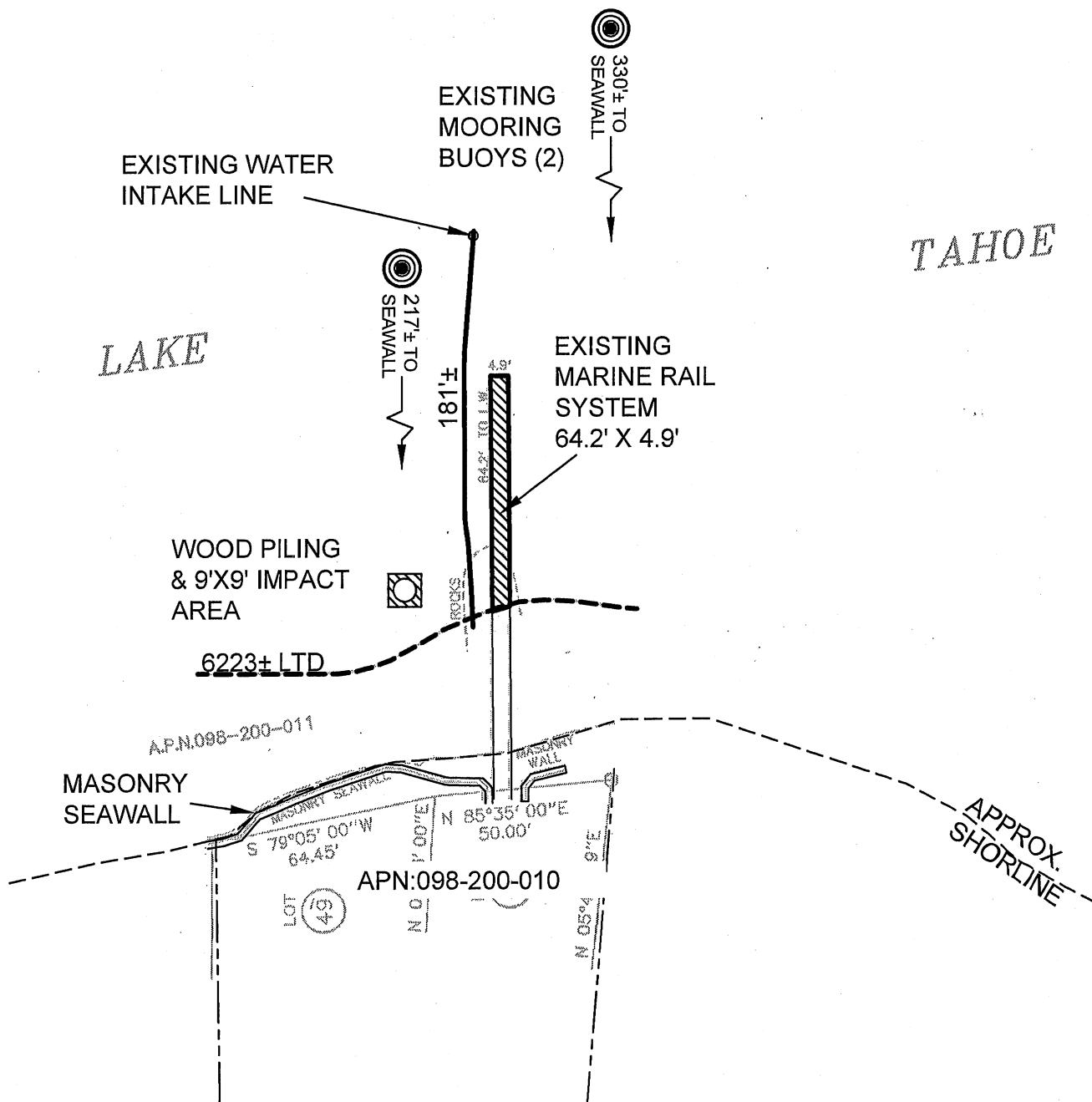
All those lands underlying an existing water intake line lying adjacent to those parcels described in said Grant Deed.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 12/29/2016 by the California  
State Lands Commission Boundary Unit.





## EXHIBIT A

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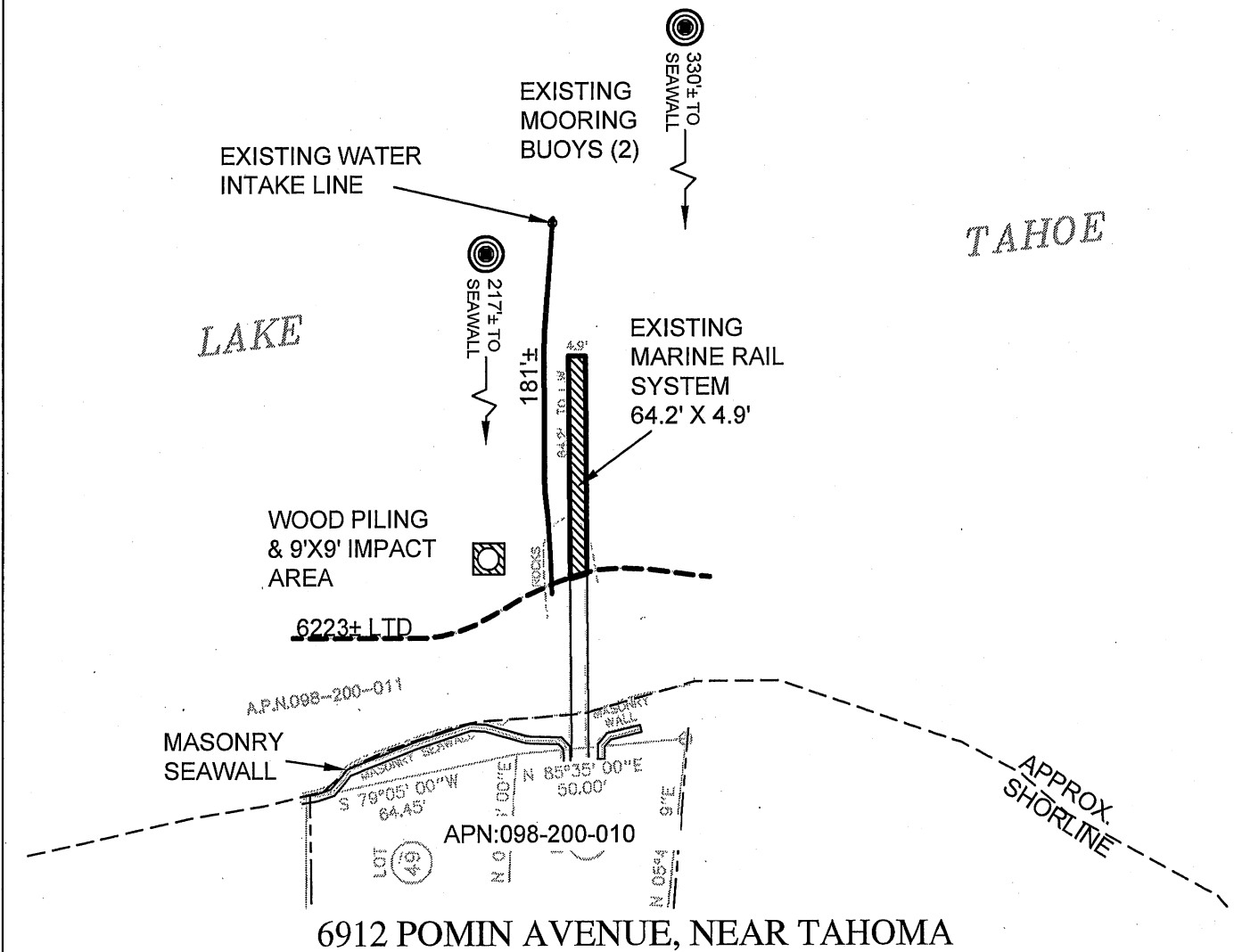
LAND DESCRIPTION PLAT  
W 27043, FLANCE  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION

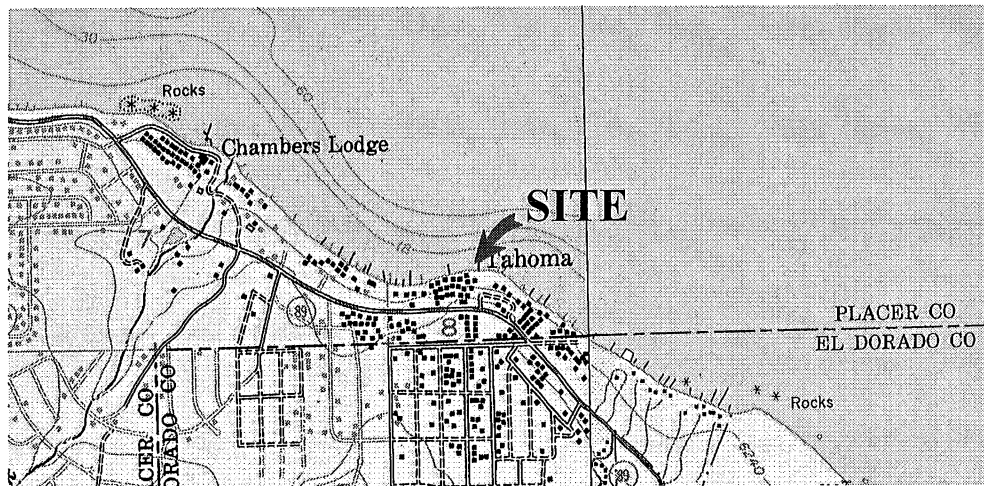




## SITE



## LOCATION

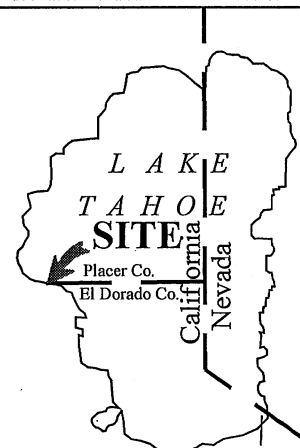


MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

## Exhibit B

W 27043  
FLANCE  
APN 098-200-010  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY



RPF 12/29/16